

STATE OF SOUTH DAKOTA

SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

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IN THE MATTER OF THE COMPLAINT FILED
BY WATERTOWN MUNICIPAL UTILITIES,
WATERTOWN, SOUTH DAKOTA AGAINST
LAFRAMBOISE CONSTRUCTION, WATERTOWN,
SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

OC04-006

Transcript of Proceedings
December 1, 2004

ORIGINAL

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD,
Rolayne Ailts Wiest, Attorney
Sara Harens, Attorney
Kevin Kouba, Chairman
Steve Lehner, Member
Todd Chambers, Member
Gene Solseth, Member
Pat Gilligan, Member
Doug Larson, Member
Jerry Schroeder, Member
Ed Anderson, Member
Rod Cundy, Member
Larry Englerth, Executive Director

A P P E A R A N C E S

STANTON W. FOX,
CITY OF WATERTOWN,
City Attorney, 23 Second Street Northeast,
Watertown, South Dakota 57201-0910,
appearing on behalf Watertown Municipal
Utilities;

RAYMOND D. RYLANCE,
WILES & RYLANCE,
Attorneys at Law, 3 East Kemp, Suite 200,
Watertown, South Dakota 57201;
appearing on behalf of LaFramboise
Construction.

Reported By Cheri McComsey Wittler, RPR, CRR

PRECISION REPORTING

L I M I T E D

1 STATE OF SOUTH DAKOTA

2 SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

3 =====

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 5 BY WATERTOWN MUNICIPAL UTILITIES,
 6 WATERTOWN, SOUTH DAKOTA AGAINST
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APPEARANCES

STANTON W. FOX,
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3

1 CHAIRMAN KOUBA: I think we'll get
 2 started. Welcome, and thank you for coming. I'll
 3 begin the hearing for Docket OC04-006 in the matter
 4 of the complaint filed by Watertown Municipal
 5 Utilities, Watertown, South Dakota against
 6 LaFramboise Construction, Watertown, South Dakota
 7 regarding knowingly damaging the gas line and
 8 failure to notify the operator or at least the
 9 One Call Notification Center in accordance with
 10 SDCL 49-7A-12 until the following morning.

11 The time is approximately 1 o'clock p.m., the
 12 date is December 1, 2004, and the location of the
 13 hearing is in the auditorium of the Northwestern
 14 Office Building, 600 Market Street, Huron,
 15 South Dakota.

16 I am Kevin Kouba, Chairman of the South Dakota
 17 One Call Board. Other Board members present are
 18 Jerry Schroeder, Golden West Telecommunications,
 19 Todd Chambers, City of Pierre, Steve Lehner,
 20 Northwestern Energy, Pat Gilligan, Brookings-Deuel
 21 Rural Water, Rod Cundy, Mediacom, Doug Larson,
 22 Norther Border Pipeline, Gene Solseth, Hills Septic
 23 Service, and Ed Anderson, South Dakota Rural
 24 Electric Association.

25 I am presiding over this hearing. This

2

1 TRANSCRIPT OF PROCEEDINGS, held in the
 2 above-entitled matter, at the Northwestern Office
 3 Building Auditorium, 600 Market Street, Huron,
 4 South Dakota, on the 1st day of December 2004,
 5 commencing at 1 o'clock p.m.

6 =====

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1 hearing was noticed pursuant to the Board's Notice
 2 of Hearing issued October 22, 2004. The issue at
 3 this hearing shall be, number one, whether
 4 LaFramboise violated SDCL 48-7A-12 by knowingly
 5 damaging a gas line and failing to notify the
 6 operator or, if unknown, the One Call Notification
 7 Center. Also at issue shall be whether the
 8 penalties shall be imposed by the Board pursuant to
 9 SDCL 49-7A-18 or/and 49-7A-19 and if so what those
 10 penalties shall be.

11 All parties have the right to be present and
 12 to be represented by an attorney. All persons so
 13 testifying will be sworn in and subject to
 14 cross-examination by the parties. The Board's
 15 final decision may be appealed by the parties
 16 through the State Circuit Court and the State
 17 Supreme Court.

18 Sara Harens will act as the Board's counsel.
 19 She may provide recommended rulings on procedural
 20 and evidentiary matters. The Board may overrule
 21 its counsel's preliminary rulings throughout the
 22 hearing. If not overruled, the preliminary rulings
 23 will become final rulings. And I will now turn the
 24 hearing over to Ms. Harens.

25 MS. HARENS: I'm Sara Harens, a

5

1 staff attorney with the Public Utilities
2 Commission. I've also provided Rolayne Wiest,
3 another attorney with the Commission, to sit in at
4 this hearing, and I would ask the parties to now
5 make their appearance.

6 MR. FOX: For the record, on behalf
7 of the Watertown Municipal Utilities Department,
8 Stanton Fox. I'm the City Attorney. And with me
9 is Bert Magstadt. He is the assistant general
10 manager of the Watertown Municipal Utilities
11 Department.

12 MR. RYLANCE: Ray Rylance appearing
13 on behalf of Mr. LaFramboise Construction, and
14 Mr. LaFramboise is also present.

15 MS. HARENS: Thank you. Did you
16 want to go through your list of witnesses at this
17 time?

18 MR. FOX: The only witness we intend
19 to call will be Bert Magstadt, which is seated next
20 to me.

21 MR. RYLANCE: Call one witness,
22 Tom LaFramboise.

23 MS. HARENS: Does Watertown wish to
24 make an opening statement at all?

25 MR. FOX: Well, I think procedurally

6

1 perhaps what we'd want to do is maybe stipulate as
2 to what we already agreed upon as is settled and
3 obviously not something that needs to come up
4 before the Board. And one thing that I would point
5 out, and I think this is simply a script error, but
6 in the Notice of Hearing one of the things that's
7 alleged, it suggests the issue at hearing will be
8 whether Mr. LaFramboise violated SDCL 48-7A-12. I
9 believe it should be 49-7A-12. Just so it is clear
10 in the record that is what the issue is at the
11 hearing, I believe.

12 Mr. Rylance prior to him and I coming in did
13 discuss some of the things I think we can stipulate
14 as being part of the record. Ray, do you want to
15 go ahead?

16 MR. RYLANCE: I can go ahead. We're
17 well-aware it's 49, not 48 so that's not an issue
18 for us. Mr. Fox and I have stipulated. We were
19 both a little unsure what's part of the record so
20 we were going to stipulate the Complaint as filed
21 by the City of Watertown should be admitted, that
22 Complaint. And then there was an Answer submitted
23 by Mr. LaFramboise dated June 18, 2004, which was
24 his response to the Complaint, that those should be
25 entered into the record.

7

1 And I guess we need to stipulate to the
2 August 9, 2004 letter that we received from
3 Larry Englerth with reference to the Complaint and
4 the Answer. That's the basis of our stipulation.

5 MS. HARENS: What about the
6 responses to the August 9 letter, or will we do
7 that through witnesses?

8 MR. RYLANCE: Well, I'm willing
9 to -- Stanton and I were just discussing this.
10 There's a July 22, 2004 responsive letter to your
11 executive director's letter of July 14. On July 14
12 Larry wrote a letter to two parties, and they
13 responded. I'm only willing to stipulate to the
14 entry of the documents that the parties are present
15 that wrote them so they can be cross-examined.

16 Page 2 of the July 22, 2004 letter from
17 Mr. Magstadt includes some things and those parties
18 aren't here and since they're not subject to
19 cross-examination, I'm not going to stipulate to
20 their entry. And also Tom's response to that,
21 which was dated July 25, 2004.

22 MR. FOX: So I'm clear, Ray, I'm not
23 certain, did you stipulate to the inclusion into
24 the record the rejection by the Municipal Utilities
25 Department of the panel finding?

8

1 MR. RYLANCE: I did. That should be
2 included. That's why we're here.

3 MR. FOX: You did include the
4 July 14, 2004 letter that made the two inquiries of
5 the parties. Is that part of what he included?

6 MR. RYLANCE: Which letter?

7 MR. FOX: It's a July 14 letter.

8 MR. RYLANCE: Yes. From the Board.

9 MR. FOX: Correct.

10 MR. RYLANCE: Correct. But deleting
11 the second page of the response by the City.

12 MS. HARENS: So we'll mark the
13 Complaint as Exhibit 1.

14 (Exhibit 1 is marked for identification)

15 MS. HARENS: The Answer will then be
16 marked as Exhibit 2.

17 (Exhibit 2 is marked for identification)

18 MR. RYLANCE: The July 14 letter
19 should be 3.

20 MS. HARENS: Correct. The July 14
21 letter from Mr. Englerth, Exhibit 3.

22 (Exhibit 3 is marked for identification)

23 MS. HARENS: And then the July 22
24 response from Mr. Magstadt.

25 MR. RYLANCE: Correct.

1 MS. HARENS: Just the first page.
 2 MR. RYLANCE: Correct.
 3 MR. FOX: Correct.
 4 MS. HARENS: Will be marked as
 5 Exhibit 4.
 6 (Exhibit 4 is marked for identification)
 7 MS. HARENS: The two-page response
 8 from Mr. LaFramboise or one? I had an attachment
 9 to mine.
 10 MR. RYLANCE: Just the one page is
 11 fine, just the letter dated July 25.
 12 MR. MAGSTADT: We've never seen
 13 that, I guess.
 14 MR. FOX: That's not something we
 15 have in our file.
 16 MR. RYLANCE: It was a responsive
 17 letter.
 18 MR. MAGSTADT: Responsive to
 19 July 14?
 20 MR. RYLANCE: Correct.
 21 MR. FOX: Was the City provided a
 22 copy of that?
 23 MR. MAGSTADT: I never saw one.
 24 MS. HARENS: You're not CCed on
 25 this.

1 MR. RYLANCE: Just the front page.
 2 MS. HARENS: Do you want a moment to
 3 look at that?
 4 MR. FOX: Is that Exhibit 5?
 5 MS. HARENS: It would be.
 6 (Exhibit 5 is marked for identification)
 7 MS. HARENS: Then the August 9
 8 letter from Mr. Englerth and the recommendation of
 9 the Enforcement Committee, did you want all of that
 10 in?
 11 MR. RYLANCE: Correct.
 12 MR. FOX: The August 9 letter, yes.
 13 MS. HARENS: All as one or the
 14 letter separate?
 15 MR. RYLANCE: Oh, well, why don't we
 16 do each page as one.
 17 MR. FOX: I guess. They're
 18 incorporated by reference, I think, in the cover on
 19 August 9, but it makes no difference.
 20 MR. RYLANCE: It's fine with me as
 21 long as I know how many pages it is. It would be
 22 his letter plus the findings.
 23 MR. FOX: And the recommendation.
 24 MR. RYLANCE: And the
 25 recommendation, and the acceptance and the

1 rejection sheet.
 2 MR. FOX: And that's it, right, four
 3 pages?
 4 MR. RYLANCE: That's it.
 5 (Exhibit 6 is marked for identification)
 6 MS. HARENS: Is that it?
 7 MR. RYLANCE: Yeah. I have one
 8 exhibit. Do you have any, Stanton?
 9 MR. FOX: Yeah. We are going to
 10 attempt to introduce a photograph of the site.
 11 MS. HARENS: Let's go back to
 12 Exhibit 5. Have you had a chance to review
 13 Mr. LaFramboise's letter?
 14 MR. FOX: Yeah. I have, and we have
 15 no objection to its entry.
 16 MS. HARENS: Okay. Did you want to
 17 have the court reporter mark your exhibits now and
 18 then we can introduce -- or offer and introduce
 19 them when they come up?
 20 MR. RYLANCE: That would be fine.
 21 MR. FOX: That's fine.
 22 (Exhibits 7 and 8 are marked for identification)
 23 MS. HARENS: I guess for the record
 24 we'll review here Exhibits 1 through 6 have been
 25 stipulated and entered into the record. They've

1 been stipulated by both parties. Is that correct?
 2 MR. FOX: Correct.
 3 MR. RYLANCE: That's correct.
 4 MS. HARENS: And I guess with that,
 5 are we ready to proceed? Is Watertown ready to
 6 proceed?
 7 MR. FOX: We are, yes.
 8 MS. HARENS: Would you like to make
 9 an opening statement?
 10 MR. FOX: Just briefly, if I could.
 11 On behalf of the Watertown Municipal Utilities I
 12 have reviewed the August 9 letter which has been
 13 identified as Exhibit 6, and it's the specific
 14 finding by the Committee wherein they indicate that
 15 they found insufficient evidence to determine the
 16 actual time of damage and accordingly dismissed the
 17 underlying Complaint which we're appealing, that
 18 the City trusts that this panel and this Board will
 19 find after reviewing the evidence that there is
 20 sufficient evidence to determine the actual time
 21 that the damage occurred and that is why the City
 22 has initiated this appeal.
 23 Thank you.
 24 MS. HARENS: Thank you, Mr. Fox.
 25 Mr. Rylance, would you care to make an opening

13

1 statement at this time?
 2 MR. RYLANCE: Not at this time.
 3 We'll reserve it.
 4 MS. HARENS: With that, are you
 5 ready to proceed with your witness?
 6 MR. FOX: We are, yes. The City's
 7 one and only witness is going to be Bert Magstadt.
 8 BERT MAGSTADT,
 9 called as a witness, being first duly sworn in the
 10 above cause, testified under oath as follows:
 11 MS. HARENS: You may proceed with
 12 questions.
 13 MR. FOX: Thank you.

DIRECT EXAMINATION

BY MR. FOX:

16 Q Would you state your name and occupation.
 17 A Bert Magstadt, assistant general manager for Watertown
 18 Municipal Utilities, Watertown, South Dakota.
 19 Q And were you so employed in that capacity during the
 20 month of May and June of this year?
 21 A Yes, I was.
 22 Q And during May or June of this year did you have
 23 occasion to become aware of an injury to a Municipal
 24 Utilities gas line at or around the location of
 25 901 Fourth Avenue Southwest in Watertown?

14

1 A Yes. It was brought to my attention.
 2 Q How did you become aware of the injured gas line?
 3 A It was actually on May 27, which I believe was a
 4 Thursday. It was about 11:30 in the morning when I was
 5 notified. The reason why I wasn't notified earlier is
 6 because at that time we were in the process of going
 7 through a federal pipeline inspection with the state
 8 pipeline inspector, Martin Bettmann, in addition to the
 9 federal pipeline inspector from Kansas City.
 10 Leonard Steiger I think is his name. Something like
 11 that.
 12 But anyway so I was in closed-door meetings
 13 the whole morning. And when we got out at about 11:30
 14 that's when one of my employees informed me of the
 15 situation that happened.
 16 Q And so did you then go to the location?
 17 A Not at that time. I was a little upset, and that's not
 18 the time to confront anybody so I went to lunch with
 19 the two individuals knowing that my crew was already
 20 there, already had it fixed or for the most part
 21 already had it fixed at that time and then I went out
 22 to the job site with the two pipeline inspectors who
 23 were going to oversee the actual repair and
 24 installation of the new service line at that above
 25 address for part of their inspection.

15

1 And it was about 1:30 give or take is when I
 2 was there, and I approached Mr. Tom LaFromboise at that
 3 time and was addressing the issue with him about the
 4 hit gas line.
 5 Q So, Mr. Magstadt, in addition to the two individuals
 6 you identified that you were there and yourself and
 7 Mr. LaFramboise. Were there any other people at the
 8 job site when you got out there?
 9 A Besides various crew members from Mr. LaFramboise's
 10 crew, I believe my crew was still there, yeah.
 11 Jerry Burns was still there, and two of our welders on
 12 our gas department were there and maybe even John Lundy
 13 (phonetic), who would be our league survey technician I
 14 believe was in the general vicinity too.
 15 Q So when you got to the site did you at some point have
 16 a conversation with Mr. LaFramboise?
 17 A Yes, I did about 1:30.
 18 Q What, if anything, do you recall?
 19 A I was the only one present with Tom at the time and we
 20 were walking towards on the project -- Fourth Avenue
 21 walking towards the west about half a block, maybe a
 22 block away from the actual site of that damage is when
 23 I was next to Tom, asked him how the damage occurred
 24 and what he told me at that time was he hit it the
 25 night before, looked at it, didn't think it -- didn't

16

1 see any leak or didn't smell any leak and where it was
 2 damaged it was not leaking right there.
 3 It was about 20 foot away where there was a
 4 dresser coupling, which we do have a photograph I
 5 submitted with the initial Complaint you can see that
 6 coupling. That was the portion that was leaking within
 7 about 20 foot or so from the house. I asked him why it
 8 wasn't addressed to us that night when it was damaged,
 9 and the comment that was made to me was, I don't know,
 10 other things just started coming up. I suppose a lot
 11 of different people were asking him different things.
 12 And he said, I forgot until the morning when our
 13 locator showed up at about 8:30 or so, give or take.
 14 They usually showed up every morning about that time to
 15 see what needs to be marked for the project, and that
 16 is the time when Tom made the comment to that
 17 individual, Scott Strauss (phonetic) --
 18 MR. RYLANCE: Objection, hearsay.
 19 Mr. Magstadt wasn't present at the time, can't
 20 testify as to what happened.
 21 MS. HARENS: Sustained.
 22 MR. FOX: May I continue?
 23 MS. HARENS: Uh-huh.
 24 Q So, Mr. Magstadt, referring only to the conversation
 25 that you had with Mr. LaFramboise, is there anything

17

1 else about the conversation that you haven't already
2 shared with the Board?

3 A That pertains to the actual hit line. No, that's
4 basically about it.

5 Q How did the conversation end?

6 A This project was actually done during two different
7 years. Half the project was done in the year before,
8 and then this phase was being done this year. The
9 other thing I made a comment to him was then at that
10 time was that there was still an outstanding debt on a
11 water line that was damaged --

12 MR. RYLANCE: Objection, your Honor,
13 relevancy.

14 MS. HARENS: Sustained.

15 Q So that's it with regard to the injured gas line, the
16 conversation that you and Mr. LaFramboise had?

17 A For the most part, yes.

18 Q At any point during that conversation did you indicate
19 to Tom that you were going to be approaching the
20 One Call Board or make any suggestions regarding a
21 violation of any statutory provision regarding failing
22 to notify you or One Call about the damage?

23 A I don't recall I did.

24 MR. FOX: May I approach the
25 witness?

18

1 MS. HARENS: Yes, you may.

2 Q Mr. Magstadt, I'm handing you what's previously been
3 marked as Exhibit 8. Would you describe what's
4 depicted in that photograph?

5 A What's in the photograph, this was taken about two
6 weeks ago, after the project was completed. And the
7 reason I took this picture is the other three pictures
8 that I submitted with the Complaint there's one picture
9 that shows an open trench in the house and the thing
10 that may be difficult to see at that particular picture
11 is our crews were already there and disassembled the
12 meter set. Because of the damage since we had the gas
13 off we rebuild all the meter sets --

14 MR. RYLANCE: I'm going to object to
15 the answer as being unresponsive. He can identify
16 the picture, but the rest of it isn't relevant to
17 the picture.

18 MS. HARENS: I'm going to allow the
19 testimony so he can lay foundation for the exhibit.

20 MR. RYLANCE: All right.

21 A And in the picture the reason why I took this picture
22 again was the previous picture that I submitted did not
23 have a meter on it so it's difficult to see just the
24 riser. That's not what he would have saw when the
25 damage occurred. This picture shows exactly for the

19

1 most part what he would have saw where there's a meter,
2 and when you see the picture you can clearly see that
3 where this picture was taken is approximately where the
4 damage occurred.

5 And this is probably 30 feet or so from there
6 where you can physically see right here is a gas meter,
7 and there would have been yellow paint marks going
8 right out to about the point where he thought where he
9 hit tree roots.

10 Q Mr. Magstadt, for the benefit of the panel there's a
11 house in the foreground there. What is the address of
12 that home as depicted in that photograph?

13 A That would be 324 South Broadway, the house in
14 question.

15 Q And to the best of your knowledge, Mr. Magstadt, if you
16 could, I'm going to hand you a pen and if you'd make a
17 mark on the paragraph and indicate with an X perhaps
18 somewhere in the center of the photograph where you
19 understand the gas line was buried at that location
20 when it was struck.

21 A You're talking trace where the gas line is?

22 Q Correct.

23 (Witness draws on document)

24 Q Okay. With a blue pen you've indicated -- you've made
25 what looks like five blue markings, and that depicts

20

1 the location of the underground gas line that was
2 damaged?

3 A Yes.

4 MR. FOX: I'm going to move
5 admission of Exhibit 8.

6 MS. HARENS: Any objection?

7 MR. RYLANCE: No.

8 MS. HARENS: Exhibit No. 8 is
9 admitted. Sorry. Thank you.

10 Q Mr. Magstadt, to the best of your knowledge on the date
11 that the damage to the line would have occurred would a
12 locate have been performed at the site to give the
13 contractor some idea of where the gas line may be
14 buried underground?

15 A Yes.

16 Q How would that be depicted on site?

17 A Well, Mr. LaFramboise would have called in locates,
18 which is not in issue. All of that stuff was taken
19 care of. The other thing what we do on street
20 projects, which we heard some recommendations from not
21 only our own locators but also contractors and I think
22 Tom would agree with this, it does help, every morning
23 we send out the same locator -- we assign one locator
24 per street project so it's the same person, and he
25 would go out every morning around that 8:30 time frame

21

1 when he would get out to the job site, visit with
2 either the foreman or whoever the person was in charge,
3 where they were yesterday, where they're going today,
4 what they need remarked, anything get washed out, any
5 flags get pulled up with kids in the neighborhood,
6 things like that, and he would have remarked
7 accordingly.

8 And then also probably had his cell phone
9 number, I assume, in case anything came up later on in
10 the day or could have called our office and the
11 individual would have swung by at a different time to
12 address any needs or questions that may arise from the
13 locates.

14 **Q** Mr. Magstadt, when you arrive at a scene where a line's
15 been damaged or broken is it possible for the Utilities
16 to quantify based on gas lost or anything to know just
17 how long it may have been leaking in the air?

18 **A** No. Unless it's a huge hit, and we see it on our
19 SCADA system with all the sudden it goes up. But this
20 was nothing near that big. We've only had one that big
21 ever.

22 **Q** So based on what you observed on the day that you went
23 out to the site with the pipeline inspectors and your
24 conversations with Mr. LaFramboise, in your mind were
25 you able to determine the actual time of damage to that

22

1 gas line?

2 **A** The only way I could determine the actual damage to the
3 gas line was my conversation I had with Tom at about
4 1:30 that afternoon was when he stated he told me it
5 was hit the night before and he forgot, got busy, to
6 get ahold of us until this morning. And that's how I
7 determined what I guess was my time. On that Complaint
8 I think I said 7 o'clock, and then I put some kind of
9 disclaimer that said estimate or just a guess about
10 what time it occurred.

11 **Q** So when you arrived at the scene you mentioned some of
12 the repair crew was on-site. Did you have
13 conversations with those folks?

14 **A** Well, I asked them if it was hit, if it was marked
15 properly. Everybody there said, yeah, it was hit, it
16 was marked properly.

17 MR. RYLANCE: I'm going to object to
18 any statement about what other people said as being
19 hearsay.

20 MS. HARENS: Sustained.

21 **Q** So, Bert, on behalf of the Utilities you signed the
22 rejection of the recommendation of the previous
23 panel's decision. Explain to the Board why you
24 didn't accept the recommendation.

25 **A** The recommendation, paraphrasing it --

23

1 MR. RYLANCE: I'm going to object to
2 the response -- the rationale as to why they didn't
3 accept it is irrelevant to the issue before the
4 Board, which is did he knowingly hit this and if he
5 did, did he notify properly. Why they want to
6 object or don't want to object doesn't have any
7 bearing other than to try to serve the benefit --
8 or the recommendation of this Board. It's
9 irrelevant.

10 MS. HARENS: I'm going to allow the
11 testimony. You may continue. The objection is
12 overruled.

13 **A** Repeat the question again.

14 **Q** My question was on behalf of the Utilities Department
15 why did you reject the recommendation of the panel,
16 finding insufficient evidence? What was the motivation
17 of Utilities in pursuing it further beyond the panel's
18 recommendation?

19 **A** It was a couple of things that struck me as odd. First
20 of all, I remember the conversation that I had with Tom
21 at 1:30 where he told me that it was hit the night
22 before and he got busy and he forgot to call. The
23 other thing that concerned me is the Board's comment
24 back where they did not have -- where they did not have
25 sufficient documentation or evidence to determine the

24

1 exact time when it was hit. Basically my word against
2 his word.

3 In reading the Complaint that Tom
4 submitted -- I'm not sure what exhibit that is. 2? I
5 think that's the initial Complaint he put in there. He
6 even states in that Complaint the night before he hit
7 what he thought was tree roots. He backed off because
8 there was cables in the vicinity.

9 MR. RYLANCE: I'm going to object to
10 the response as being argumentative.

11 MS. HARENS: Your objection is
12 overruled. The witness is merely stating what
13 evidence is already in the record.

14 MR. RYLANCE: All right.

15 **A** In that letter he stated that the night before he hit
16 what he thought was tree roots, be in close proximity
17 to I believe he stated four cables or something like
18 that, which this happens to be a very congested area
19 for major trunk lines, fiber and stuff like that, that
20 he stopped, moved over, and proceeded.

21 If there's cables in that area and he hit
22 what he thought was a tree root --

23 MR. RYLANCE: Objection,
24 unresponsive and argumentative. This isn't
25 testimony. This is summary of counsel. That's

25

1 what he has an attorney here to do. He's supposed
 2 to testify as to what he knows. His counsel can
 3 speak for the rationale of the City.
 4 MS. HARENS: Again, I'm going to
 5 allow the testimony. Your objection is overruled.
 6 He's merely going over evidence that's already in
 7 the record.
 8 A The reason why we questioned it is because in his
 9 letter, like I stated, he felt he hit the tree roots
 10 and he was concerned about the cables being there, that
 11 he backed off and moved out to the side, thought he
 12 would have looked and he didn't.
 13 Q Mr. Magstadt, you were earlier testifying about the
 14 conversation that you had on site with Tom. At any
 15 point did you discuss with Tom whether or not he did
 16 any manual excavation at or around the site of the
 17 bend?
 18 A I don't recall. I don't recall if I visited with him
 19 if he spotted the lines or anything like that. I don't
 20 recall if that ever came up in that conversation.
 21 Q Is it your understanding that manual excavation is
 22 required in that type of work?
 23 A According to the law it is, yes.
 24 MR. FOX: At this time I have no
 25 further questions.

26

1 MS. HARENS: Thank you. Does
 2 Mr. LaFramboise, have any questions of this
 3 witness?
 4 MR. RYLANCE: Yes, we do.
 5 MS. HARENS: You may proceed.
 6 CROSS-EXAMINATION
 7 BY MR. RYLANCE:
 8 Q Mr. Magstadt, so I can get a time line on this event,
 9 your Complaint centers around the work that
 10 Tom LaFramboise was doing on the evening of May 26 and
 11 the following morning of May 27; correct?
 12 A Yes.
 13 Q All right. Is the 26th a Wednesday? Is that correct?
 14 A I believe it is.
 15 Q Well, let's just call it a Wednesday and Thursday.
 16 A Wednesday and Thursday.
 17 Q It will be easier for me, and we'll assume we're
 18 correct for the moment. But anyhow on Wednesday
 19 evening, if I understand right, Tom was out working on
 20 this project. Were you present at that time?
 21 A No.
 22 Q So exactly what he was doing on that evening you have
 23 no knowledge, other than what he may have told you?
 24 A Correct.
 25 Q All right. And on the morning of May 27 in reviewing

27

1 the answer by Tom you weren't present to see any work
 2 that he did on the morning, Thursday morning on the
 3 27th; correct?
 4 A Correct.
 5 Q And, if I understand you correctly, you didn't show up
 6 on the scene until 1:30 or so on Thursday afternoon.
 7 A Correct.
 8 Q If I further understand, the only information that you
 9 have that you gave this Board about when this occurred
 10 was statements that Tom gave you; correct?
 11 A Repeat that once again.
 12 Q You're trying to put the time on the evening, Wednesday
 13 evening, and you get that based upon what you say Tom
 14 had relayed to you; correct?
 15 A Correct.
 16 Q And other than that statement, you have no other direct
 17 evidence to indicate what the time was; correct?
 18 A No. The actual Complaint that Tom filled out. He
 19 stated he hit it the night before.
 20 Q No.
 21 A He hit what he thought was tree roots. Excuse me.
 22 Q All right.
 23 A Which is consistent with what he told me at 1:30.
 24 Q So that's all you have to go on from your point of
 25 view; correct?

28

1 A Uh-huh.
 2 Q All right. Now when I look at a letter of July 14 from
 3 the One Call Board, which is Exhibit No. 3, you're
 4 familiar with that? That's the one that Larry sent you
 5 asking you two questions?
 6 A Yes.
 7 Q And they were, what was the actual excavating activity
 8 that occurred when the damage -- that caused the damage
 9 and do you have any other evidence to support the time
 10 line. And you responded on July 22, 2004 in Exhibit
 11 No. 4, and you're familiar with your response.
 12 A Uh-huh.
 13 Q And in your response you indicated that to determine
 14 what was damaged you looked at part of the pipe that
 15 was damaged, the gas line pipe itself.
 16 A Right.
 17 Q And based upon your review of that it appeared to you
 18 that that was hit with a front end portion of a Bobcat
 19 skid steer loader?
 20 A Uh-huh.
 21 Q Is that correct?
 22 A Uh-huh.
 23 Q All right. And the other answer that you gave is what
 24 we've previously talked about, was a time line. Did
 25 you make any observations on Thursday about the

1 location of the gas line, or was that already
 2 completed, repaired, and covered up by the time you got
 3 there?
 4 A If you look at that picture that was submitted -- I'm
 5 not sure which one of the three, but you'll see that
 6 open trench in front of that house. That was a picture
 7 taken by me at about that 1:30 time frame on Thursday
 8 afternoon or 2 o'clock or somewhere in that vicinity so
 9 that was the first time I saw it.
 10 Q Okay. Was the gas line repaired by the time you got
 11 there?
 12 A The new one was being put in and in the process of
 13 being welded.
 14 Q Okay. And that was below the street?
 15 A Yes. It would have been below grade.
 16 Q And how far below grade would that be? How far is it?
 17 4 inches?
 18 A When they put that one in they were going probably
 19 about 12 to 14 inches below grade.
 20 MR. RYLANCE: That's all the
 21 questions I have.
 22 MS. HARENS: At this time I guess I
 23 would ask the members of the Board if they have any
 24 questions for Mr. Magstadt that would be
 25 appropriate to ask him at this time.

1 MR. CHAMBERS: I have a question.
 2 When you had your conversation with Mr. LaFramboise
 3 at about 1:30 did he state he actually hit a gas
 4 line, or did he state he hit roots?
 5 THE WITNESS: I don't remember him
 6 saying anything about the roots, but I'm not sure
 7 if he necessarily said gas line. I think he said I
 8 hit the line but didn't say -- I don't remember him
 9 actually saying gas line. I think it was probably
 10 understood.
 11 MR. CHAMBERS: And he said he hit
 12 that the night before.
 13 THE WITNESS: Yes.
 14 MR. CHAMBERS: That's all I have.
 15 MS. HARENS: Any other members of
 16 the Board have any questions?
 17 MR. GILLIGAN: I have a question.
 18 Did the contractor hand dig to expose the
 19 utilities, other utilities?
 20 THE WITNESS: I don't know.
 21 MS. HARENS: Any other questions of
 22 the Board?
 23 I guess I just have one then. You are
 24 obviously employed with the City of Watertown and
 25 are a representative of the City; is that correct?

1 THE WITNESS: Actually
 2 representative of the Municipal Utilities.
 3 MS. HARENS: When was the Municipal
 4 Utilities in the City of Watertown notified that
 5 there had been a gas line damaged at this location?
 6 THE WITNESS: Right around that 8:30
 7 time frame Thursday morning the 27th when the
 8 locator showed up.
 9 MS. HARENS: Okay. That's all the
 10 questions I have. I guess I would allow any
 11 redirect.
 12 MR. FOX: I have none. Thank you.
 13 MR. RYLANCE: None.
 14 MS. HARENS: With that I guess you
 15 may step down and be excused at this time.
 16 Does the Watertown Municipality have any other
 17 witnesses that they wish to call at this time?
 18 MR. FOX: No, we do not.
 19 MS. HARENS: I guess with that I
 20 would turn to Mr. LaFramboise the case now -- the
 21 side now turns to you to put on your case.
 22 MR. RYLANCE: They rested?
 23 MS. HARENS: I'm guessing they are
 24 since they don't have any other witnesses to call.
 25 MR. FOX: Yes.

1 MS. HARENS: Did you wish to start
 2 out with an opening statement or call your first
 3 witness?
 4 MR. RYLANCE: I think we'll just
 5 call Mr. LaFramboise, and then we'll go with a
 6 closing statement.
 7 MS. HARENS: Okay.
 8 MR. RYLANCE: All right.
 9 THOMAS LAFRAMBOISE,
 10 called as a witness, being first duly sworn in the
 11 above cause, testified under oath as follows:
 12 MS. HARENS: You may proceed with
 13 questioning when ready.
 14 MR. RYLANCE: Thank you.
 15 DIRECT EXAMINATION
 16 BY MR. RYLANCE:
 17 Q Tom, state your name for the record, please.
 18 A Thomas LaFramboise from LaFramboise Construction,
 19 Watertown, South Dakota.
 20 Q And you are the president of LaFramboise Construction?
 21 A Yes.
 22 Q I'm not going to call you Mr. so we're just going to
 23 get on with Tom because I know you wouldn't know who
 24 Mr. was if we did that; right?
 25 A For sure.

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1 **Q** Tom, you've sat here, you've listened to the testimony
 2 here today, you've also read the Complaint and you
 3 filed an Answer on that, okay?
 4 **A** Right.
 5 **Q** All right. Now let's go back onto the 26th, which is
 6 the evening before, Wednesday evening, okay?
 7 **A** Okay.
 8 **Q** Would you tell the Board what you were doing that
 9 night?
 10 **A** Well, we call it brushing up. The forecast was rain.
 11 I was running my blade across the grade from Maple to
 12 Third, which is about four blocks, to prevent any
 13 puddling on the job. Right on the Broadway corner I
 14 caught what I thought was tree roots because there was
 15 three big stumps right there, come right out to the
 16 street. I just backed out. I continued on to get my
 17 job finished up. About 7 o'clock I parked my blade and
 18 went home.
 19 **Q** Tom, I've laid a photograph in front of you which is
 20 marked as Exhibit No. 7 and ask you if you can identify
 21 that photo.
 22 **A** That's a photo taken from west to east, from Broadway
 23 facing east on the north side of the street.
 24 **Q** Okay. And does that show the street that you were
 25 working on, approximate location?

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1 **A** Yes.
 2 **Q** All right. And the work that you were doing that night
 3 is a final grading of the street -- or the roadbed,
 4 however you want to call that?
 5 **A** Right. We were just brushing it up, right.
 6 **Q** All right. So you weren't digging dirt or what have
 7 you?
 8 **A** No.
 9 **Q** Now on the evening of the 26th in your Answer you
 10 indicate you thought you hit some tree roots and you
 11 were concerned about some fiber optic cables. Why were
 12 you concerned about that? Were they close to the
 13 surface or what?
 14 **A** They were inches from our grade, yes. We were right on
 15 top of them.
 16 **Q** And so you indicated you hit the tree roots and you
 17 moved over.
 18 **A** Right.
 19 **Q** Okay. When you completed did you ever think you hit a
 20 gas line?
 21 **A** Not until the next morning.
 22 **Q** Okay. So on the evening of the 26th you were aware of
 23 tree roots and that's why you moved over and you were
 24 not aware of any gas line problems or anything on that
 25 evening; is that correct?

35

1 **A** Correct.
 2 **Q** All right. What machine were you operating on the
 3 evening of the 26th?
 4 **A** A motor grader, a blade.
 5 **Q** Were you operating a Bobcat?
 6 **A** No, it was not.
 7 **Q** All right. Now on the morning of the 27th, that would
 8 be Thursday morning, when you got to work that morning
 9 what were you doing?
 10 **A** Well, I got to work about a quarter after 7, and I was
 11 going to dig those tree roots out of that intersection
 12 to alleviate my problems.
 13 **Q** Okay.
 14 **A** I had worked probably a half an hour and encountered
 15 the gas line and I was walking to my pickup to call the
 16 City about it when the locator showed up. And I would
 17 say that was probably about 5 after 8, maybe 10 after
 18 8.
 19 **Q** So you went into the same area you're working the night
 20 before?
 21 **A** Yes.
 22 **Q** And you were going to clean out tree roots.
 23 **A** Right.
 24 **Q** And you worked for approximately how long?
 25 **A** Oh, 40 minutes, 30, 40 minutes.

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1 **Q** All right. And that's when you found what you
 2 perceived to be a gas line problem?
 3 **A** Yes.
 4 **Q** And now when you went to your pickup, what, I assume to
 5 get a telephone to call the Utilities?
 6 **A** Right.
 7 **Q** And then the utility guy showed up, and you notified
 8 him?
 9 **A** Yes.
 10 **Q** All right. And then it's my understanding he
 11 subsequently called the correct people at the Utilities
 12 to come out and look at the problem?
 13 **A** Yes, he did.
 14 **Q** Now in relation to the tree roots that you encountered
 15 on the evening before, on Wednesday evening, all right?
 16 **A** Okay.
 17 **Q** And you were blading that area; correct?
 18 **A** Right. Right.
 19 **Q** Now the next morning you were in there digging with
 20 your Bobcat; correct?
 21 **A** Yes.
 22 **Q** And when you encountered the gas line can you tell this
 23 Board where that gas line was in relation to the tree
 24 roots? Obviously it wasn't above it but in relation to
 25 was it below it, even with it, or can you tell them

1 where it was located?

2 A Well, there's a photo there that shows the tree roots

3 were -- there was a magnitude of tree roots in that

4 area that we were working to try to eliminate, get rid

5 of the stumps and a couple of small trees, a couple of

6 big ones there. We were working on the small ones

7 because I couldn't have got the big ones with a Bobcat.

8 And the one tree was just about right on top of the gas

9 line.

10 Q Now when you encountered the gas line or when you saw

11 it was that below the level you were working at the

12 night before?

13 A I would say it was below, yes.

14 Q How far? 2 inches, 3 inches, 4 inches?

15 A 3, 4.

16 Q Now during the course of Mr. Magstadt's testimony he

17 indicated that during the course of a conversation you

18 had with him on Thursday afternoon that, one, you told

19 him that you hit a gas line the night before. Is that

20 accurate?

21 A No, it's not.

22 Q Did you tell him that you didn't see a leak or you

23 didn't see any damage? Did you tell him that?

24 A No, I did not.

25 Q Did you tell him that you forgot -- you just simply

1 forgot to report it?

2 A No, I didn't.

3 Q Tom, as you're sitting here today and you review what's

4 transpired, to your knowledge did you hit a gas line on

5 the evening of the 26th?

6 A I don't know for sure when I hit it. I just know that

7 when we dug it up it was bent.

8 Q Okay. And did it appear to you that it might have been

9 bent by the bucket of a Bobcat?

10 A It might have been. I don't know.

11 Q But it was below the grade you were working at the

12 night before.

13 A Right.

14 Q Exhibit No. 7, in case I forgot to ask you, Tom, is an

15 indication of what that street looked like on the day

16 you were blading it with your grader. Is that close

17 proximity of what it looked like?

18 A Yes.

19 MR. RYLANCE: We would offer Exhibit

20 No. 7.

21 MS. HARENS: Are there any

22 objections?

23 MR. FOX: May I approach the

24 witness?

25 MS. HARENS: Yes, you may.

1 MR. FOX: No objection.

2 MS. HARENS: Then Exhibit No. 7 will

3 be admitted.

4 MR. RYLANCE: That's all the

5 questions we have.

6 MS. HARENS: Mr. Fox, do you have

7 any questions of this witness?

8 MR. FOX: Please, yes. Thank you.

9 CROSS-EXAMINATION

10 BY MR. FOX:

11 Q Tom, you mentioned in response to one of Ray's

12 questions that you were satisfied that the tree roots

13 that you encountered were below -- actually were above

14 where the gas line that wound up injured was located;

15 correct?

16 A Right.

17 Q Do you know that because you got out and hand dug to

18 know where the gas line was?

19 A No. When I dug them out the next morning is when I

20 found the gas line when I was working on the tree

21 roots.

22 Q At any point before you notified that utility employee

23 on that morning at or around 8 o'clock about the bent

24 gas line at any point prior to that did you do any hand

25 excavating around the area to locate the line?

1 A No, I did not.

2 Q And, Tom, I'm going to refer to both your June 18

3 letter to the South Dakota One Call Board which has

4 been identified as Exhibit 2 and your July 25 letter to

5 Mr. Englerth that is identified as Exhibit 5, and in

6 both those, and I'll paraphrase, you indicate that the

7 next morning you took the Bobcat and tried to remove

8 the tree stumps and found the injured gas line.

9 So is it your testimony through these

10 letters, both Exhibit 2 and 5, that when you saw the

11 line you presumed it had been injured before that

12 morning?

13 A I presumed that, yes. I didn't know because I might

14 have hit it that morning with the Bobcat. I don't

15 know.

16 Q But you could have hit it the night before?

17 A I very well could have.

18 Q But you didn't take any steps the night before to

19 satisfy yourself whether what you thought were tree

20 roots were actually a gas line?

21 A There was no reason -- there were no marks, no locates

22 on the site to indicate there was a gas line there so I

23 presumed it was tree roots. That's why I didn't stop,

24 and that's why I didn't make any phone calls.

25 Q As you were performing work in the area were you aware

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1 of where the gas meter was in proximity to the home
 2 that was being excavated in front of?
 3 **A** I don't look -- my job is to keep my eyes on my blade,
 4 and I don't really look for gas meters and stuff like
 5 that.
 6 **Q** But, as you sit here today, it's possible that the
 7 night before, as Mr. Magstadt indicated you indicated
 8 to him, it's quite possible you damaged the gas line
 9 the night before?
 10 **A** It could have been the night before. We were on the
 11 fill cycle on the project. It might have been hit a
 12 week before. I don't know. I told the locator the
 13 morning of that I thought I might have hit it the night
 14 before because it was bent when I dug it up. That's
 15 when I told him about it. He come out there about
 16 5 after 8.
 17 **Q** So the night before did you -- after you encountered
 18 what you thought were tree roots did you go out and do
 19 a smell test to see if you smelled natural gas?
 20 **A** No.
 21 **Q** No?
 22 **A** There was no reason to. There was no indication of a
 23 gas line on the site.
 24 **Q** At no point prior to that day or evening had you seen
 25 any locates out there indicating that there was gas in

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1 the area.
 2 **A** Not in that particular location. Down the block a half
 3 a block further east the locator pointed out to us a
 4 gas line on a house, and he said it's weird because the
 5 meter's clear over there, the gas line's clear over
 6 here, it runs about a 45 degree and we hand dug it as
 7 he was there so we knew where it was but that one there
 8 was no emphasis on it. The locates were gone. That's
 9 why we called the locates just a few days prior to
 10 that.
 11 **Q** Sorry for interrupting you. So the morning that the
 12 bent gas line was discovered were you surprised to find
 13 it there? Was it a complete shock there was a gas line
 14 there?
 15 **A** Yes, it was.
 16 **Q** And your surprise was based on the fact that you hadn't
 17 gotten a locate at that location?
 18 **A** Right. That and, like I say, there was no indication
 19 of a gas line there so I wasn't --
 20 **Q** So had you called for locates at that area?
 21 **A** Yes, I had.
 22 **Q** And to your knowledge there were no -- what other
 23 locates were out there? What other things were you
 24 aware of were underground?
 25 **A** All of the cables, the fiber optics, telephones. They

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1 were all in that same area.
 2 **Q** So there were locates for those, but there was no
 3 locate for a gas.
 4 **A** Right.
 5 **Q** And those were all clearly visible to you? The day
 6 that you worked until 7 o'clock in the evening those
 7 locates were all present?
 8 **A** We had the cables exposed through the intersection so
 9 we knew where they were, the Broadway intersection.
 10 **MR. FOX:** I have no further
 11 questions for Mr. LaFramboise.
 12 **MS. HARENS:** At this time I would
 13 entertain any questions from members of the Board
 14 for Mr. LaFramboise.
 15 **MR. GILLIGAN:** Was the gas pipe
 16 marked located or --
 17 **THE WITNESS:** I'm sorry?
 18 **MR. GILLIGAN:** Was the gas pipe
 19 marked and located with flags, or did the City
 20 locator simply tell you where it was?
 21 **THE WITNESS:** Prior to that he had
 22 probably located them, but we had a 3-inch
 23 rainfall. Everything was washed out. That's why I
 24 had to call for relocates. Plus there was other
 25 contractors working in the area, and they

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1 obliterated anything there was for markings.
 2 **MR. GILLIGAN:** Was it painted or
 3 flagged?
 4 **THE WITNESS:** At the time when they
 5 come back there was both.
 6 **MR. GILLIGAN:** The second locate or
 7 the original locate?
 8 **THE WITNESS:** The original back
 9 whenever it was, April or May or whenever it was we
 10 called.
 11 **MR. SCHROEDER:** Were the
 12 communication cables, were they intertwined with
 13 the roots, or was it sunk?
 14 **THE WITNESS:** No. There was a big
 15 tree stump on the corner, and we had the
 16 PrairieWave there because we didn't want to take a
 17 chance on ripping out their cables and they had to
 18 come out. As we lifted that, he was standing right
 19 there, and it cleaned them off just like you took a
 20 broom and swept them off. That's how close they
 21 were.
 22 **But they weren't wrapped around it. They just**
 23 **lifted them off the top. But the gas main and**
 24 **these cables were real close to being the same**
 25 **elevation.**

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1 MR. SCHROEDER: That evening were
2 you concerned you possibly might have hit a
3 communication cable?
4 THE WITNESS: No, I was not.
5 MR. LARSON: Could you smell gas
6 after any time on Thursday or Wednesday?
7 THE WITNESS: No.
8 MR. LARSON: Even after it was
9 discovered a line was hit Thursday when the
10 municipality crews were on-site was there ever a
11 smell of gas?
12 THE WITNESS: No.
13 MS. HARENS: Mr. Anderson has a
14 question for you as well. He's going to
15 reference --
16 MR. ANDERSON: I'm going to ask him
17 a question. I'll be referring to Exhibits 1 and
18 Exhibit 7.
19 Exhibit 1, the picture that was submitted with
20 the original Complaint, Mr. LaFramboise, and then
21 Exhibit 7, now you've indicated what you were doing
22 with your blade you called it brushing up?
23 THE WITNESS: Right.
24 MR. ANDERSON: Brushing up, it's not
25 a finished grade?

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1 THE WITNESS: No. Not 100 percent,
2 no. No.
3 MR. ANDERSON: Okay. I just want
4 you to try to help clear something up for me. Is
5 this -- essentially this is the same location where
6 the alleged damage took place.
7 THE WITNESS: This is looking east.
8 The location would probably be right back behind
9 this right here.
10 MR. ANDERSON: So would it have
11 essentially the same surface that I'm looking at
12 right here?
13 THE WITNESS: Yes.
14 MR. ANDERSON: Okay. But you said
15 the damage was off.
16 THE WITNESS: Well, it was right on
17 the edge of the grade.
18 MR. ANDERSON: That's what I need
19 you to clear up for me. It appears to me that in
20 the photo that was submitted in the original
21 Complaint it appears to me that there's been
22 additional grade work done --
23 THE WITNESS: There was.
24 MR. ANDERSON: -- after, the
25 following morning.

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1 THE WITNESS: Right.
2 MR. ANDERSON: So is there
3 approximately what, 8 to 10 inches of additional
4 grade that was taken off the following morning?
5 THE WITNESS: No. The subgrade
6 would be back here, would be finished. This is
7 where I excavated with the Bobcat to get the tree
8 roots and stuff. That was what I was working with.
9 MR. ANDERSON: The following
10 morning.
11 THE WITNESS: Right. When I found
12 the gas line.
13 MR. ANDERSON: Okay. And the trench
14 was open?
15 THE WITNESS: No. The City did that
16 before Bert took the pictures.
17 MR. ANDERSON: Okay. So when you
18 were working this is after this had been
19 discovered?
20 THE WITNESS: No.
21 MR. ANDERSON: Okay.
22 THE WITNESS: I was working
23 excavating this, found the tree stumps when I
24 encountered it is when I found it on the site.
25 MR. ANDERSON: Okay. That was the

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1 following morning.
2 THE WITNESS: Right.
3 MR. ANDERSON: So what is the
4 difference in that grade there would you say?
5 THE WITNESS: Oh, probably 15,
6 16 inches.
7 MR. LARSON: So the picture that
8 you're referring to with the open trench, that
9 trench was opened by the municipality.
10 THE WITNESS: Yes.
11 MR. LARSON: To make the repair.
12 THE WITNESS: Right. Yes.
13 MR. LARSON: That's all I have.
14 MR. SOLSETH: So when you found this
15 bent gas line is when you removed the tree stump?
16 It was underneath the tree stump. How did you come
17 about finding the bent gas line?
18 THE WITNESS: Well, as I was
19 excavating with the Bobcat to get those tree stumps
20 away from the grade I brushed it up and come
21 against it and exposed it with my Bobcat.
22 MR. SOLSETH: So in that colored
23 picture you guys were working out where I see plain
24 dirt.
25 THE WITNESS: Right.

1 MR. SOLSETH: You were never in
2 where the grass was.
3 THE WITNESS: Right.
4 MR. SOLSETH: The other exhibit
5 there where it shows the bent gas line and stuff
6 and where it's been hand dug, that's out in the
7 dirt too? Is that where they dug up the gas line
8 is from the gas towards the center of the street?
9 THE WITNESS: Yes.
10 MR. SOLSETH: So where they replaced
11 this -- or they found the dresser coupling then out
12 in the street.
13 THE WITNESS: No. The dresser
14 coupling was.
15 MR. SOLSETH: Come off the riser.
16 THE WITNESS: Coming off between the
17 house and the sidewalk. It was just a few feet
18 from the house. Right, Bert?
19 MR. MAGSTADT: Do you want me to --
20 MR. FOX: No.
21 THE WITNESS: The dresser coupling
22 was up toward the house.
23 MR. SOLSETH: And then so you were
24 there -- I don't think I need to ask this question.
25 You were digging down around this tree stump then

1 to remove it?
2 THE WITNESS: Right.
3 MR. SOLSETH: That's not really the
4 issue, though, so I shouldn't ask that question.
5 So you hit this -- well, for whatever -- well, you
6 exposed this gas line then with your Bobcat, and
7 you walk to your pickup and were going to call them
8 and tell them you damaged that line.
9 THE WITNESS: Right.
10 MR. SOLSETH: Okay.
11 MS. HARENS: Other questions from
12 the Board?
13 MR. GILLIGAN: Were you working in
14 the street the evening before with the blade?
15 THE WITNESS: Yes.
16 MR. GILLIGAN: And then the next
17 morning you were operating a skid steer in the tree
18 stump area in the boulevard.
19 THE WITNESS: Right.
20 MR. LARSON: One more question if I
21 could. Mr. LaFramboise, the dresser coupling that
22 was closer to the house it was actually in between
23 the break and the house or the riser; is that
24 correct?
25 THE WITNESS: Yes.

1 MR. LARSON: Approximately 20 feet
2 from where the pipe actually got severed.
3 THE WITNESS: I would say that was
4 pretty close. Wouldn't you?
5 MR. LARSON: Was that still -- and
6 the damage that was caused at the coupling, though,
7 was not exposed until it was discovered the
8 following morning. Is that correct?
9 THE WITNESS: The dresser coupling?
10 MR. LARSON: Yes. When the pipe was
11 damaged -- the damage, whenever it was done, did
12 not lift -- also lift the dresser coupling up out
13 from underneath the ground, expose it.
14 THE WITNESS: No.
15 MR. ANDERSON: It was still buried.
16 THE WITNESS: Yes.
17 MR. LARSON: Okay. I'm going to ask
18 for your opinion. The damage that I see in this
19 photo to the pipe, it does not appear to me that it
20 was completely bent or completely twisted over, but
21 if we're talking about low pressure gas line and
22 damage to a coupling and a link that was -- and a
23 leak that was not exposed when it was actually
24 severed, in your opinion would it be unusual to not
25 be able to smell gas right away?

1 THE WITNESS: I guess I'm not really
2 an expert at that, but it was an area a half a
3 block west of this where a gas line had been
4 leaking, and as we drove through there we could
5 smell it.
6 MR. LARSON: You could smell it.
7 THE WITNESS: Yes.
8 MR. ANDERSON: Thank you.
9 MR. LARSON: Was the line severed at
10 the time of discovery?
11 THE WITNESS: No.
12 MR. LARSON: It was just bent.
13 THE WITNESS: It was bent, and the
14 dresser coupler wasn't unhooked. It had slid. The
15 locator came in. He brought a sniffer, and I don't
16 remember if it was one part per million or
17 something and --
18 CHAIRMAN KOUBA: The night before
19 you stated that you were working at a certain level
20 with the grader and the next day when you were
21 working with the Bobcat you were excavating in an
22 area that was 3 to 4 inches below where you were
23 working previously; correct?
24 THE WITNESS: Right.
25 CHAIRMAN KOUBA: And there was no --

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1 there were no markings there where you were working
2 at all.

3 THE WITNESS: None.

4 MS. HARENS: Other questions of the
5 Board? Do you have any redirect for this witness?

6 MR. RYLANCE: I just have one
7 question in light of the questions of the Board. I
8 want to clear it up before I forget. I'm not sure
9 if the Board sees the original Complaint that has
10 photographs in there.

11 REDIRECT EXAMINATION

12 BY MR. RYLANCE:

13 **Q** Tom, you have as part of Exhibit 7, the Complaint, and
14 in front of you you have a picture that several of the
15 Board members have referred to already today that shows
16 a bent pipe and the trench in the ground, okay? And
17 looking at that portion of the exhibit it shows a
18 trench in the ground.

19 Now on this black-and-white photograph it's
20 not very clear, but there's a flag next to that trench,
21 Tom; correct?

22 **A** Yes.

23 **Q** When was that flag put there?

24 **A** The morning when the locator came over at the white
25 flag he put it there as a -- for emergency locate to

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1 know where they had to be digging.

2 **Q** That was after you had found the pipe and notified him.

3 **A** Right. Yes.

4 **Q** All right. It wasn't there before?

5 **A** No.

6 MR. RYLANCE: If the Board has more
7 questions, go ahead. I'll wait.

8 MS. HARENS: I was going to ask if
9 Mr. Fox had any recross.

10 MR. FOX: If I could, thank you.

11 RECROSS-EXAMINATION

12 BY MR. FOX:

13 **Q** Tom, to my benefit, and I presume for the Board, you've
14 referred to Exhibit 7 in response to a question
15 regarding the condition of the street along Fourth and
16 how it looked on the day you were there.

17 Do you know, Tom, what is the date of
18 Exhibit 7 when that photograph was taken?

19 **A** That was taken that same afternoon. That was taken
20 that afternoon after Bert and I were on the project.

21 **Q** Okay. So May 27 or 28, Wednesday or Thursday?

22 **A** Whatever that day was, yeah.

23 **Q** Then one other question in response to some that I
24 heard from the Board. You mentioned using one piece of
25 equipment on Wednesday and then a different piece of

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1 equipment on Thursday. Knowing your equipment, which
2 is more likely to have exerted force enough to bend the
3 pipe that we see depicted attached there? Is one piece
4 of equipment just as capable as the other of bending
5 that gas line?

6 **A** Absolutely. That piece of inch and a quarter pipe, run
7 into it with a tricycle and bend it.

8 MR. FOX: Okay.

9 MS. HARENS: Does the Board have any
10 other questions for this witness?

11 MR. SOLSETH: No. I'm fine.

12 MR. CHAMBERS: Regarding the locate
13 marks, as they stated every morning the locator
14 would come out and refresh marks. On the day of
15 Wednesday was the locator there, and did they mark
16 that service going to that house?

17 THE WITNESS: No. I hadn't seen
18 him. Even when I called my locates I hadn't seen
19 him. There was another contractor working down the
20 street on the underground, and they spent most of
21 their time with him. They weren't with us at all.

22 MR. CHAMBERS: So there's no marks
23 visible at all for that service.

24 THE WITNESS: None.

25 MR. CHAMBERS: Okay.

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1 MR. SOLSETH: Now I have a question.

2 So when you're brushing up coming down the street
3 you said that the only reason you were doing that
4 is there might be rain so you're just trying to
5 smooth it out so water doesn't puddle. The street
6 closed, open, traffic?

7 THE WITNESS: It's closed.

8 MR. SOLSETH: Closed.

9 THE WITNESS: Yes.

10 MR. SOLSETH: So you had no
11 reason -- what you were doing when you were
12 brushing up the night before, you had no reason --
13 you were not excavating. If anything else, you
14 were just smoothing out ridges or whatever that
15 were left from tracks of equipment and such? Is
16 that what it amounted to?

17 THE WITNESS: Yes.

18 MR. SOLSETH: So it would be very
19 little concern that you would have hit a gas line
20 because you might have hit an old tree stump that
21 would have been dug out and laying in the spoils or
22 whatever? Is that what the scenario would have
23 been?

24 THE WITNESS: Yeah. These roots
25 from some of these ran out 20 feet into the street.

1 MR. SOLSETH: It could have just
2 been a big tap root and you caught it with your
3 blade?

4 THE WITNESS: Yes.

5 MR. SOLSETH: So probably -- since
6 you weren't cutting, you weren't doing no cutting
7 then with your blade, you were primarily just if
8 there was a rim like this you were smoothing that
9 ridge off, you weren't going down below the
10 original grade of the street or whatever, you were
11 just smoothing things out; is that correct?

12 THE WITNESS: Yes.

13 MR. SOLSETH: I'm trying to, you
14 know, understand, you know, what you were doing.
15 So there wouldn't have been a lot of concern for a
16 gas line in your mind.

17 THE WITNESS: Right.

18 MR. SOLSETH: That night. Now the
19 next morning when you're doing the thing with the
20 skid steer, that would be a different mind-set.

21 THE WITNESS: Oh, yes.

22 MR. SOLSETH: Because you were
23 digging.

24 THE WITNESS: We were digging to a
25 foot lower trying to get them stumps out.

1 MR. SOLSETH: Thank you.

2 MS. HARENS: Other questions from
3 the Board?

4 MR. RYLANCE: I don't have any
5 further questions, but I just want to clarify
6 something. When I asked Mr. LaFramboise about that
7 picture before I referred to it as Exhibit 7.
8 That's part of Exhibit 1. I couldn't read my
9 handwriting very well. I scribbled down there.
10 I'm sorry for that.

11 I don't have any further questions in light of
12 the Board's.

13 MS. HARENS: Mr. Fox, do you have
14 any other questions?

15 MR. FOX: Only to follow up on --
16 forgive me. I forget the gentleman's name who just
17 asked the last question.

18 RE-CROSS-EXAMINATION

19 BY MR. FOX:

20 Q Tom, he referred to the work you were doing on
21 Wednesday the night before, and in response to his
22 question you indicated why you thought it was perhaps a
23 tree root. And I'm trying to understand in response to
24 one of my previous questions you indicated that it's
25 possible you hit it the night before or you could have

1 hit it that morning.

2 In light of the question and answer you just
3 gave, are you suggesting now that it's more likely that
4 you hit it in the morning or the night before, or
5 you're still not as clear as you were earlier?

6 A I still have no idea which day I hit it for sure.

7 MR. FOX: Okay. I have nothing
8 further.

9 MS. HARENS: Okay. Last chance.
10 Anybody else?

11 Okay. Thank you, Mr. LaFramboise. You may
12 step down.

13 Does Mr. LaFramboise have any other witnesses
14 he wishes to call at this time?

15 MR. RYLANCE: No, I don't. We rest.

16 MS. HARENS: With that, would you
17 like to give any closing statements?

18 MR. FOX: Just it's the City's
19 position in light of the testimony today that we
20 believe that there is sufficient supporting
21 evidence to establish the time of the injury to the
22 gas line, and we would certainly urge the Board to
23 reverse the panel's previous decision finding that
24 there was insufficient evidence as to the time.
25 Thank you.

1 MS. HARENS: Thank you, Mr. Fox.
2 Would you like to give --

3 MR. RYLANCE: Yes, I would. I think
4 if the Board has carefully gone over the exhibits
5 that were submitted, I think they tell a tale that
6 really accurately describes what happened here.

7 It's obvious from the questions of the members
8 of the Board that you're all involved in
9 contracting and we're not. You get right to the
10 heart of the issue. And I think it's correct. And
11 the answer is Tom was in there on Tuesday -- on
12 Wednesday night, not digging, not excavating, just
13 smoothing the property out.

14 The next morning he went in and he was digging
15 with a Bobcat. You know, there's a known axiom in
16 the law that says you can't claim any greater
17 version of the facts than what you offer yourself.
18 One of the most telling things, and we agree with
19 them or at least I do, is that in the July 22, 2004
20 letter from Mr. Magstadt he states, "I think the
21 damage occurred with the front end loader portion
22 of a Bobcat."

23 That occurred on Thursday morning. It's
24 consistent with the testimony here today. Once he
25 had been digging in and scratching around in the

1 area for a half an hour or so, once he found it and
2 went to his pickup and on the way to his pickup the
3 City locator came by, he told him, and the events
4 followed thereafter.

5 He also testified here today that when he's
6 digging on the following morning on Thursday he's
7 about 2 or 3 inches below the surface he's working
8 at the night before. He couldn't hit it the night
9 before because he found it 2 or 3 inches below.

10 But Tom in his testimony told you the truth.
11 He doesn't know when he hit it or how he hit it.
12 It isn't like you're hitting a brick wall with a
13 Bobcat. It's a small pipe. Anything will bend it
14 if you hit it properly. And so we believe the
15 evidence as submitted by Mr. LaFramboise on his
16 behalf and the evidence submitted on behalf of the
17 City is that it occurred with a front end loader --
18 a Bobcat loader, I should say, which was only used
19 on Thursday morning. As soon as he was aware of
20 the damage he notified.

21 We believe that Tom and his company complied
22 with the statute and the One Call notifications on
23 this project. So we would ask you to again rule in
24 favor of Mr. LaFramboise that he did not knowingly
25 hit a gas line and then failed to report within the

1 reasonable time as required by the statute. I
2 think the evidence is pretty clear.

3 Thank you for your time.

4 MS. HARENS: Thank you. I guess
5 with that I would turn it back over to you,
6 Mr. Kouba, to let me know what the Board wants to
7 do.

8 CHAIRMAN KOUBA: I just want to say
9 thank you to the parties involved. I think at this
10 time I would request a recess of the Board and
11 converse with the attorneys that represent the
12 Board. So I would ask for a 30-minute recess,
13 reconvene at a quarter to 3.

14 (A short recess is taken)

15 CHAIRMAN KOUBA: For the record let
16 the record show that we are reconvening this
17 hearing at 2:40, and I'd ask for comments at this
18 time from the Board.

19 MR. ANDERSON: Mr. Chairman.

20 CHAIRMAN KOUBA: Mr. Anderson.

21 MR. ANDERSON: I would move that
22 based on the testimony and the evidence submitted
23 today there is insufficient evidence to
24 substantiate a violation of SDCL 49-7A-12.

25 CHAIRMAN KOUBA: Having heard that

1 motion, is there a second to that motion?

2 MR. GILLIGAN: I'd second that
3 motion.

4 CHAIRMAN KOUBA: Seconded by
5 Mr. Gilligan. Any further discussion? Any further
6 discussion?

7 Hearing none, I will take roll of the members
8 of the Board. Those in favor of that motion
9 signify by saying aye.

10 Jerry Schroeder.

11 MR. SCHROEDER: Aye.

12 CHAIRMAN KOUBA: Todd Chambers.

13 MR. CHAMBERS: Aye.

14 CHAIRMAN KOUBA: Steve Lehner.

15 MR. LEHNER: Aye.

16 CHAIRMAN KOUBA: Pat Gilligan.

17 MR. GILLIGAN: Aye.

18 CHAIRMAN KOUBA: Rod Cundy.

19 MR. CUNDY: Aye.

20 CHAIRMAN KOUBA: Doug Larson.

21 MR. LARSON: Aye.

22 CHAIRMAN KOUBA: Gene Solseth.

23 MR. SOLSETH: Aye.

24 CHAIRMAN KOUBA: Ed Anderson.

25 MR. ANDERSON: Aye.

1 CHAIRMAN KOUBA: Kevin Kouba, same
2 sign. That being decided, we stand adjourned.

3 Thank you.

4 (The hearing concluded at 2:45 p.m.)
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1 STATE OF SOUTH DAKOTA)
2 :SS CERTIFICATE
3 COUNTY OF HUGHES)
4

5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter and Notary Public in and for the
7 State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 1st day of
11 December 2004, and that the attached is a true and
12 correct transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 31st day
14 of December 2004.
15

16
17 
18 Cheri McComsey Wittler,
19 Notary Public and
Registered Professional Reporter
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21
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25

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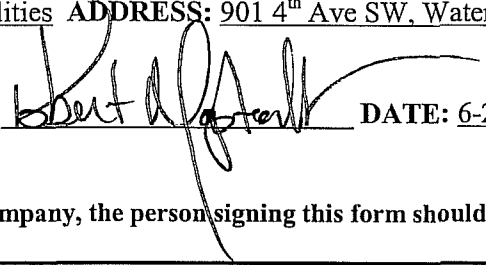
Mail completed form to:

PUBLIC UTILITIES COMMISSION
500 EAST CAPITOL AVENUE
PIERRE, SD 57501
ATTN: SOUTH DAKOTA ONE CALL BOARD

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

COMPLAINT

COMPLETE INFORMATION IS REQUIRED – ADDITIONAL PAGES MAY BE USED IF REQUIRED

ALLEGATION OF PROBABLE VIOLATION(S) OF SOUTH DAKOTA ONE CALL LAWS**I. ACTION REQUESTED BY:**COMPLAINT FILED BY INDIVIDUAL ☐ OR BUSINESS* ☒ PERSON FILING COMPLAINT: Bert MagstadtCOMPANY: Watertown Municipal Utilities ADDRESS: 901 4th Ave SW, Watertown, SD 57201 PHONE NUMBER: (605) 882-6233SIGNATURE OF COMPLAINANT:  DATE: 6-2-04 EMAIL ADDRESS: bmagstadt@watertownmu.com

*If the complaint is filed on behalf of a Company, the person signing this form should have the proper authority to file the complaint.

II. ACTION REQUESTED AGAINST:NAME OF EXCAVATOR/FACILITY OPERATOR: LaFramboise Construction PHONE NUMBER: (605) 886-3684ADDRESS: 204 16th St NW, Watertown, SD 57201WAS A LOCATE REQUESTED FROM SD ONE CALL? YES ☒ NO ☐ LOCATE TICKET #: 041390593START DATE ON TICKET: 5-20-04DID EXCAVATOR WAIT UNTIL THE START DATE/TIME ON THE TICKET BEFORE COMMENCING EXCAVATION? YES ☒ NO ☐ N/A ☐WERE BURIED FACILITIES EXPOSED BY HAND OR WITH NON-INVASIVE EQUIPMENT PRIOR TO EXCAVATION? YES ☐ NO ☐ N/A ☒**III. FACILITY INVOLVED (IF ANY)**TYPE OF FACILITY INVOLVED: 1-1/4" steel natural gas service line OPERATOR OF FACILITY (IF KNOWN): Watertown Municipal UtilitiesOPERATOR ADDRESS: 901 4th Ave SW, Watertown, SD 57201 PHONE NUMBER: (605) 882-6233DEPTH OF COVER: 15-18" PRESSURE: 10 psig VOLTAGE: n/a NUMBER OF CABLE PAIRS: n/a**IV. MARKING**WERE FACILITIES MARKED? YES ☒ NO ☐ N/A ☐WAS THE MARKING COMPLETE PRIOR TO THE START TIME ON THE TICKET? YES ☒ NO ☐ N/A ☐DID EXCAVATOR PRE-MARK WITH WHITE PAINT? YES ☐ NO ☒ N/A ☐WAS THE FACILITY MARKED ACCURATELY (WITHIN 18 INCHES)? YES ☒ NO ☐ N/A ☐

DID EXCAVATOR USE REASONABLE CARE TO MAINTAIN LOCATE MARKS FOR LIFE OF PROJECT?
YES ☐ NO ☒

HAVE YOU DISCUSSED THE PREVIOUS STATEMENTS WITH THE OTHER PARTY? YES ☒ NO ☐

IS THERE AGREEMENT? YES ☒ NO ☐ IF NO, PLEASE EXPLAIN: _____

V. DAMAGE (IF ANY)

FATALITIES: Natural Gas Service line **INJURIES:** n/a **LENGTH OF HOSPITALIZATION:** n/a

ESTIMATED PROPERTY DAMAGE (\$): 500.00 **NUMBER OF CUSTOMERS AFFECTED:** 1

DAMAGED IN: PUBLIC ☒ PRIVATE ☐ (RIGHT-OF-WAY)

PHOTOS OF THE DAMAGED FACILITY? YES ☒ NO ☐

ADDITIONAL INFORMATION: Natural gas line was damaged the evening of 5/26/04. Contractor didn't think that he damaged pipe that bad. Pictures show that gas line was kinked and the force even bowed the pipe 5' downstream of hit area. Gas line was leaking at a dresser coupling 20' from house for 12 hours or so. Fortunately, gas did not accumulate and blow up house.

VI. PROBABLE VIOLATION

SPECIFIC STATUTE(S) OR RULE(S) THAT WAS VIOLATED: 49-7A-12 Notification of Damage to Underground Facility - Civil Penalty

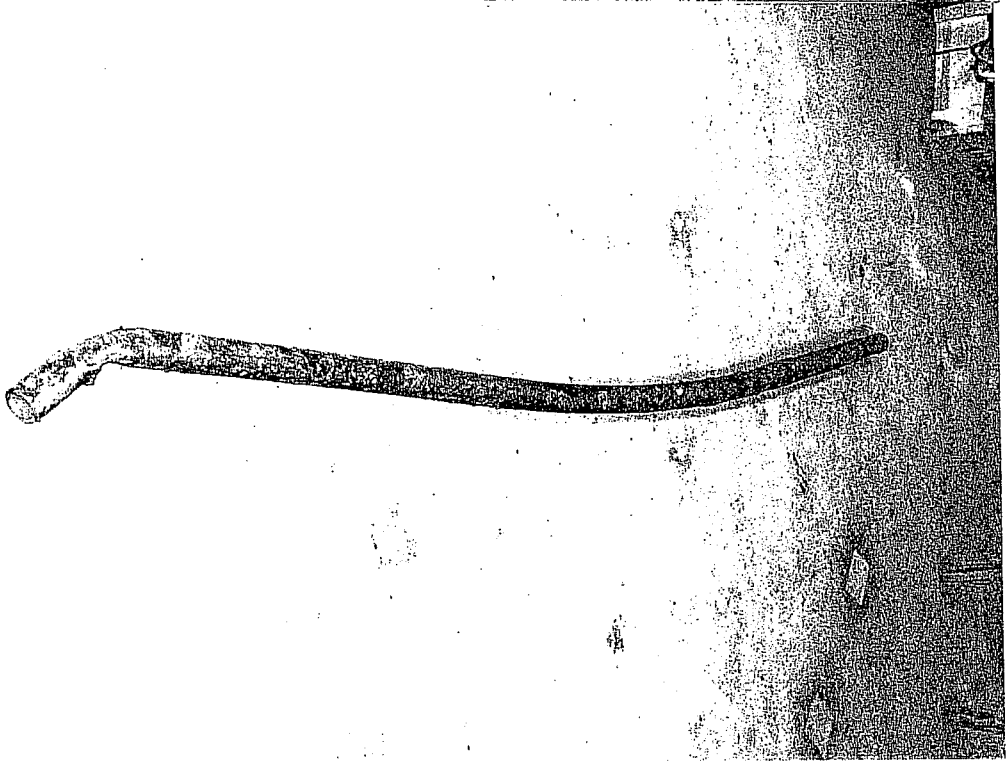
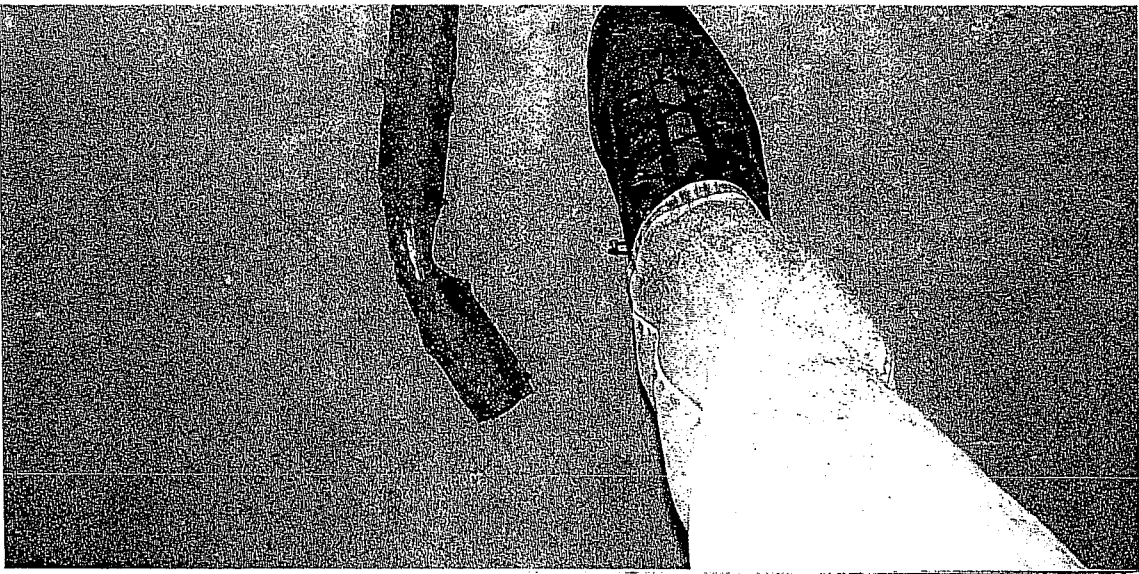
ADDRESS/LOCATION OF PROBABLE VIOLATION: 324 S Broadway, Watertown, SD 57201

DATE/TIME OF PROBABLE VIOLATION: estimate: 7:00 pm on 5/26/04

HAVE YOU DISCUSSED THIS PROBABLE VIOLATION WITH THE PARTY THE ACTION IS FILED AGAINST: YES ☒ NO ☐

IF YES, NAME OF THE PARTY WITH WHOM YOU DISCUSSED THE PROBABLE VIOLATION: Tom LaFramboise, owner of LaFramboise Construction

DESCRIPTION OF PROBABLE VIOLATION: LaFramboise Construction was excavating for a street project and hit a gas line. Tom LaFramboise said he hopped out of his equipment after he hit the line and looked at it and didn't smell anything so figured it was not broke. When the line was hit, the force loosened a dresser coupling downstream of the area that was hit. This leak was within 20' of 324 S. Broadway. On the following morning, 5/27/04, at around 8:15 am, one of Watertown Municipal Utility's locators stopped by the project to check up on all of the contractors working this street project and to touch up locating marks. He went to talk to Tom LaFramboise about his work area to make sure everything was marked where he was working. Tom then told our employee about the damaged line, which in turn, our employee called a gas crew and started investigating the damaged line. Fortunately the dresser coupling did not come loose very much, but gas was leaking from the line and the gas could of accumulated if this situation happened over the weekend, possibly causing the house to blow up. The issue I have is he knowingly damaged a gas line and failed to notify the operator, or atleast the One-Call, in accordance to 49-7A-12, until the following morning. In fact, if one of our employees didn't stop by the job site, I doubt he would of called it in.



324 S BROADWAY
WATERTOWN, SD

DRESSER COUPLING WAS
LOCATED BY EDGE OF
SIDEWALK.

DAMAGED SECTION OF
1-1/4" STEEL GAS PIPE.

NOTICE BOW IN PIPE
NEAR TOP OF PHOTO.

DRESSER COUPLING WAS
LOCATED ON TOP END OF PIPE
IN PHOTO.

DAMAGE FROM CONTRACTOR
IS ON PIPE NEAR BOTTOM OF
PHOTO.

BETTER PICTURE SHOWING
DAMAGE CAUSED BY
CONTRACTOR

**LaFramboise Construction Inc.
204 16TH St. N.W.
Watertown, South Dakota 57201**

June 18, 2004

To: south Dakota One Call

I received your letter on June 18, 2004 and after reviewing the allegation my response is this.

Bert Magstad is a proverbial liar. I did not tell him I hopped out of my machine and inspected damage and didn't smell gas.

As you can see by the photos there are a lot of tree roots present. I was working within inches of Fiber Optic 900 pair telephone, 600 pair telephone and either a 100 or 200 pair telephone. As we worked we notified the proper people and worked with caution. As I was blading I encountered what I thought was tree roots and being that close to cables I backed away, moved over and proceeded with caution. The next morning we took the bobcat and tried to remove the tree stumps in the area and found the injured gas line. As I approached my pickup to call the utilities the locator arrived and I showed him the gas line and if you will call 882-6233 and ask the people at the desk they will tell you I have reported every scrape we found on the gas line, every broken road box, or water valve box, and every electric line we encountered. I find Magstad remarks very degrading and if he would shut his mouth long enough I could have explained this to him. As far as the locates, I asked for locates and in a 4 block area they freshened up from 1ST to 3RD n nothing from Maple to 1ST where we were working. The area in question has several young children and the flags last about (at best) one day. All of our grade stakes were removed and the locator showed us one line in particular towards the east end of 4Th by Maple which ran at an angle. This area was marked and pot holed for exposure, and we worked around it with no problems. There were also 3 or 4 other areas where the gas service lines were in our grade that we worked around. When we bid this job it was our belief that all utilities would be lowered or moved. We have 5 blocks to go and I hope it goes well. All of the

utility people we have worked with have been very cooperative and I was under the impression that things were going relatively smooth.

Tom LaFramboise

LaFramboise Construction Inc.



Larry Englerth
Executive Director

1012 North Sycamore Ave.
Sioux Falls, SD 57110

Tel/Fax (605) 339-0529
Email: exedir@sdonecall.com

July 14, 2004

Tom - Red
approved

Bert Magstadt
Watertown Municipal Utilities
901 4th Avenue SW
Watertown, SD 57201

Tom LaFramboise
LaFramboise Construction
204 16th Street NW
Watertown, SD 57201

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on July 14, 2004, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC04-006 filed by Watertown Municipal Utilities against LaFramboise Constructions.

Based on the information provided, the Committee determined that it was in the best interest of all parties if the meeting was suspended and that two questions be placed before the involved parties for response prior to making a final determination of probable cause was made. The questions that the committee would request you to respond to are the following:

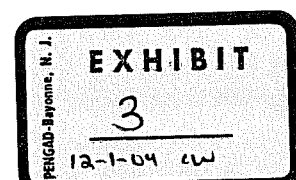
1. What was the actual excavating activity that was occurring when the damage to the gas line occurred?
2. What documentation or supporting evidence does either party have that would assist the Enforcement Committee in determining the actual time that the damage occurred?

I would appreciate your response to this inquiry at the earliest possible time but no later than July 23, 2004.

Your response may be mailed to me at 1012 N. Sycamore Avenue, Sioux Falls, SD 57110, by facsimile @ 605-339-0529 or by email at exedir@sdonecall.com

Sincerely,

Larry L. Englerth
Executive Director



MUNICIPAL UTILITIES DEPARTMENT

901 Fourth Avenue Southwest

WATERTOWN, SOUTH DAKOTA 57201-4107

PHONE (605) 882-6233

FAX (605) 882-6238

July 22, 2004

Larry Englerth
Executive Director
South Dakota One-Call
1012 North Sycamore Ave.
Sioux Falls, SD 57110

Larry,

In response to your letter dated July 14, 2004, you request some addition information on Complaint OC04-006 filed by Watertown Municipal Utilities.

1. What was the actual excavating activity that was occurring when the damage to the gas line occurred?

LaFramboise Construction was removing base material on the 4th Ave street project. I think the damage occurred with the front-end loader portion of a bobcat. The pictures I included with the complaint were taken after our own crews started repairing the damage and were meant to show everyone the close proximity of the house in the foreground, not the type of construction activity being performed.

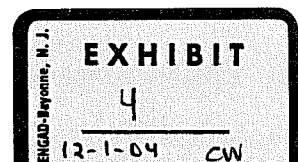
2. What documentation or supporting evidence does either party have that would assist the Enforcement Committee in determining the actual time that the damage occurred?

Our gas construction foreman received a call from our locator on 5/27/04 around 8:40 am or so that a gas line was damaged the night before. Attached is a note from our locator that called this situation to our attention. In addition, I visited with Tom LaFramboise on 5/27/04 around 1:30 pm about the damaged line. He stated to me that he hit it the night before and meant to call but got busy and forgot to until our locator showed up the following morning. I only estimated the time the line was damaged as 7:00 pm on the 5/26/04. I don't know the exact time, but what Tom told me and our locator, I know it happened the night before, 5/26/04.

I hope this information will assist the Enforcement Committee in making the correct determination on this complaint. If you have any questions, please feel free to call me at (605) 882-6233 or on my cell phone at (605) 868-1649.

Sincerely,

Bert Magstadt
Assistant General Manager
Watertown Municipal Utilities



LaFramboise Construction
204 16th St. NW
Watertown, South Dakota 57201

July 25, 2004

Attn: Larry Englerth,

In response to the Fax we received about the review on the complaint by Watertown Municipal Utilities.

#1. I was blading on 4th Ave. east of the Broadway Intersection when I encountered what, I believed to be tree roots from tree stumps on the project. There were 4 cables inches from our excavation and I backed away, moved over and continued blading to level the grade to prevent ponding if it rained.

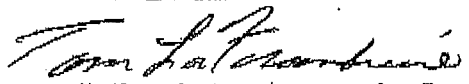
I had called for locates because kids had pulled the flags and rain had washed marking paint out.

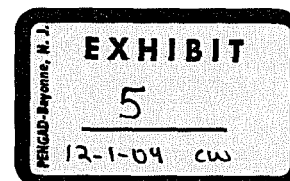
The same time frame when I called for locates from 4th St. west to Maple ST., Hawkeye called for locates for 3rd St. west and K%L Mechanical called for locates from 3rd St. West to 1st west. I guess our locate wasn't important because from 1s to 3rd was fresh paint and flagged. From 1st to Maple nothing.

#2. I have no documentation except as I was excavating with my bobcat to remove tree roots the next morning, I found a bent gas line and as I was approaching my pickup to call the utilities, the utilities locator drove up and I showed him what I found. He then reported it.

If you were to be in the Watertown area, Bert Magstadt and I could use a mediator. Maybe this would be better than by phone, e-mail, or fax.
Thank You for time.

Sincerely,
Tom LaFramboise


LaFramboise Construction Inc.





South Dakota
ONE CALL
1-800-781-7474

South Dakota One Call Notification Board

Early Enrollment
Executive Director

1012 North Sycamore Ave.
Sioux Falls, SD 57110

Tel/Fax: (605) 339-0529
Email: exedir@sdonecall.com

August 9, 2004

Bert Magstadt
Watertown Municipal Utilities
901 4th Avenue SW
Watertown, SD 57201

Tom LaFramboise
LaFramboise Construction
204 16th Street NW
Watertown, SD 57201

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on August 4, 2004, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC04-006 filed by Watertown Municipal Utilities against LaFramboise Construction.

By a unanimous vote of the Enforcement Committee, the recommended resolution to the alleged violation included in this complaint was determined to be as follows:

Complaint OC04-006

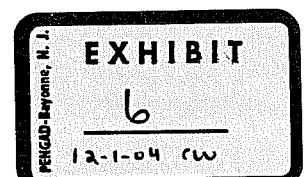
Alleged Violation of SDCL 49-7A-12 Notification of damage to underground facility

The Committee found insufficient evidence to determine the actual time of the damage and therefore dismissed Complaint OC04-006 alleging that LaFramboise Construction had violated SDCL 49-7A-12 by their failure to report damage of an underground facility at 324 S. Broadway in Watertown on May 26, 2004.

The findings and recommendation of the Enforcement Committee are summarized on the attached form.

Under SDCL 49-7A-27 either party may accept the recommendation of the Enforcement Committee or reject the recommendation of the Enforcement Committee by requesting a formal hearing on either or both of the violations alleged in this complaint. Your decision should be reflected on the third page of the attachment. **Please return the signed form prior to the close of business on September 3, 2004 to:**

South Dakota One Call Notification Board
1012 N. Sycamore Avenue
Sioux Falls, SD 57110-5747



If both parties accept this resolution, the South Dakota One Call Notification Board is required to accept the resolution and close this complaint. If either party rejects the Enforcement Committee resolution of either or both of the alleged violations, the South Dakota One Call Notification Board will conduct a hearing as a contested case under Chapter 1-26 to resolve the allegation (s) alleged in the rejected complaint(s). Following this hearing, the Board shall either render a decision dismissing the complaint for insufficient evidence or shall impose a penalty pursuant to SDCL 49-7A-18 or SDCL 49-7A-19.

Sincerely,

Larry L. Englerth
Executive Director

RECOMMENDATION

OC04-006

VIOLATION OF SOUTH DAKOTA SDCL 49-7A-12:

The Committee found insufficient evidence to determine the actual time of the damage and therefore dismissed Complaint OC04-006 alleging that LaFramboise Construction had violated SDCL 49-7A-12 by their failure to report damage of an underground facility at 324 S. Broadway in Watertown on May 26, 2004.

PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-18:

None

COMMENTS:

While the committee could not find sufficient evidence to support the claim associated with this damage, the Committee had several concerns that should be noted by the parties involved.

1. While the committee could not establish the exact time of the damage, the findings of this complaint does not reflect the concern that if the allegation was true, the safety of the general public was severely jeopardized by LaFramboise Construction.
2. The need to insure that all facilities are marked or remarked on a project of this nature take the coordination of all parties but the ultimate responsibility to insure that marks are not removed and are present at the time of excavation is that of the excavator.

ENFORCEMENT COMMITTEE ACTION

OC04-006

Watertown Municipal Utilities vs. LaFramboise Construction

FINDINGS:

OC04-006

Alleged Violation of SDCL 49-7A-12 Notification of damage to underground facility

Allegation is made by Watertown Municipal Utilities that LaFramboise Construction damaged an underground gas line while excavating at 324 S. Broadway in Watertown on May 26, 2004, and failed to properly notify Watertown Municipal Utilities or the South Dakota One Call Center as required by statute.

The response received from LaFramboise Construction did not dispute the allegation that damage occurred at 324 S. Broadway in Watertown but the response claimed that LaFramboise Construction had damaged the underground facility on the morning of May 27, 2004 and reported it to a locator at the site.

In reviewing the complaint filed by Watertown Municipal Utilities and the response from LaFramboise Construction, the committee determined the following:

1. LaFramboise Construction did damage an underground facility while excavating at 324 S. Broadway in Watertown.
2. The damage was reported to a technician for Watertown Municipal Utilities on May 27, 2004.
3. The actual date and the time of the damage cannot be established by documentation provided by either of the parties.

Based on the information noted above, the Committee found that there was insufficient documented evidence to determine the actual time of the damage and therefore found LaFramboise Construction had not violated SDCL 49-7A-12 by failing to report the damage to the underground facility as required by statute.

ACCEPTANCE OR REJECTION BY PARTIES

COMPLAINT OC04-006

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-006.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-006, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC04-006.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-006. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-006. THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

TO ACCEPT OR REJECT THE RESOLUTION OF THE ALLEGED VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON SEPTEMBER 3, 2004.

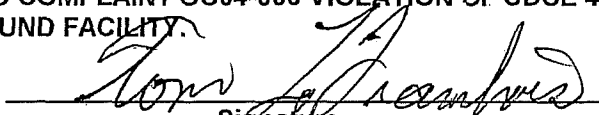
SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

PURSUANT TO SDCL 15-6-55, FAILURE TO ANSWER THIS COMPLAINT RESOLUTION COULD RESULT IN A DEFAULT JUDGEMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

OC04-006


VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF DAMAGE TO UNDERGROUND FACILITY

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-006 VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF DAMAGE TO UNDERGROUND FACILITY.



Signature
LaFramboise Construction

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-006 VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF DAMAGE TO UNDERGROUND FACILITY AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-006.



Signature
LaFramboise Construction

ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC04-006

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-006.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-006, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC04-006.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-006. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-006. THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

TO ACCEPT OR REJECT THE RESOLUTION OF THE ALLEGED VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON SEPTEMBER 3, 2004.

SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

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OC04-006

VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF DAMAGE TO UNDERGROUND FACILITY

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-006 VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF DAMAGE TO UNDERGROUND FACILITY.

Signature
Watertown Municipal Utilities

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-006 VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF DAMAGE TO UNDERGROUND FACILITY AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-006.



Signature
Watertown Municipal Utilities

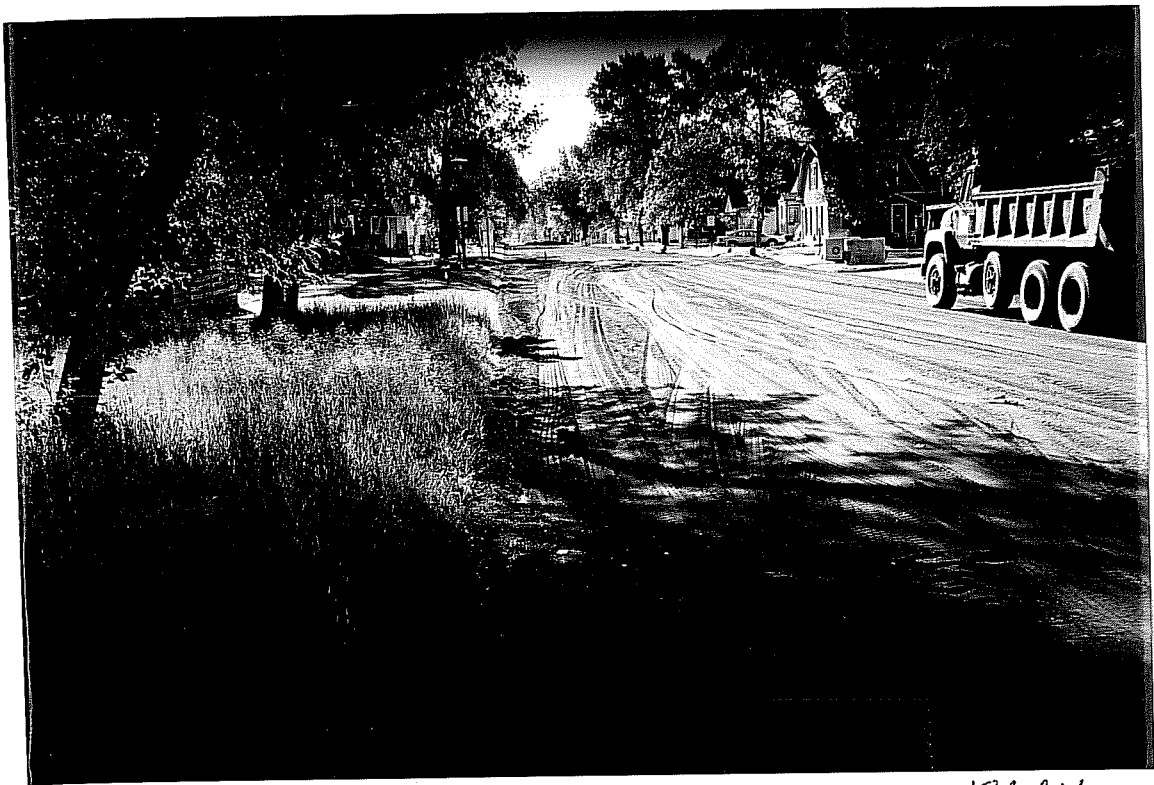


Exhibit 7

EXHIBIT

8
12-1-04 W

PENGAD-Bayonne, N. J.

